

**MINUTES OF THE PUBLIC MEETING OF THE
ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY
July 31, 2004**

BOARD MEMBERS PRESENT: President Martin Reiss, D.O.; Vice-President Stanley Grossman; Stanley Brysacz, Jr., D.O.; Murray Cohen, D.O.; David Steinway, D.O.; Charlie Hendrix; F. P. Wedel, D.O.

BOARD MEMBERS ABSENT: none.

STAFF / OTHERS PRESENT: Elaine LeTarte, Executive Director
Barbara Prah-Wix, D.O., Medical Consultant
Blair Driggs, Assistant Attorney General
Carole A. Whipple, Griffin & Associates (Court Reporter)

I. CALL TO ORDER

The Board President, Dr. Martin Reiss, called the meeting to order at 8:15 a.m.

II. ROLL CALL

The Executive Director took the roll. All Board Members were present, establishing quorum for the meeting. The staff and others listed above were also present.

The Executive Director reviewed the changes made between the draft agenda distributed to the Board on July 21, 2004 and the final agenda.

III. PRESIDENT'S REPORT

Dr. Reiss welcomed the 3rd year medical students from Arizona College of Osteopathic Medicine at Midwestern University. After the conclusion of the Investigative Hearings, applicant interview, and some of the Case Reviews, the Board held a question and answer session with the medical students. The students were dismissed at approximately 2:15 p.m.

IV. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES

- A. June 19, 2004 meeting, open session
- B. June 19, 2004 meeting, executive session

Dr. Steinway moved that the minutes be approved. Dr. Cohen seconded. The motion passed, 7-0.

V. CALL TO THE PUBLIC

Dr. Reiss explained to those present the Board's custom of asking members of the public to speak when the agenda item of interest to the person is called, and reminded people wishing to speak to fill out a speaker form and give it to a staff member. Dr. Reiss also explained that the warm temperature in the room and the dimmed lights in the office were part of the State's efforts to avoid rolling black-outs while the power companies were replacing equipment.

VI. REVIEW, DISCUSSION, AND ACTION ON CASES MOVED TO FORMAL ADMINISTRATIVE HEARING, PURSUANT TO A.R.S. § 32-1855 (E).

A. Jerold R. Morgan, D.O. Case No. 2164 License No. 3914
The Board reviewed Dr. Morgan's request that this Order be changed, and took no action.

VII. REVIEW, DISCUSSION AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. § 32-1855 (E)

A. Michael Ginder, D.O. Case No. 3033 License No. 0959
Dr. Ginder was present and represented by an attorney. Dr. Ginder was sworn in by the court reporter. The Executive Director summarized the prior proceedings, noting that this was a continuation of the hearing that began on May 8, 2004. Dr. Ginder testified and responded to the Board's questions. Dr. Wedel moved that the Board censure Dr. Ginder's license.

Dr. Steinway moved that the Board go into Executive Session for legal advice. Ms. Hendrix seconded. The motion passed 7-0, and the Board went in Executive Session at 9:00 a.m. The Board returned to Open Session at 9:14 a.m.

Dr. Wedel withdrew his motion. Dr. Ginder's attorney then called Dr. Ginder's Medical Assistant as a witness. She was sworn in by the court reporter; then testified and responded to questions from Dr. Ginder's attorney and the Board. Dr. Ginder's attorney then called the Board's Medical Consultant as a witness; she was sworn in by the court reporter, and responded to questions from Dr. Ginder's attorney.

Dr. Steinway moved that the Board place Dr. Ginder's license on probation. There was no second, and Dr. Steinway retracted the motion. The Board discussed with Dr. Ginder's attorney the specific language of the Board's laws. Dr. Ginder's attorney gave copies of materials to the Executive Director to be placed into the record.

Dr. Steinway moved, and Ms Hendrix seconded, that Dr. Ginder's license be placed on probation, in that his conduct was in violation of ARS § 32-1845 (6) "Engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard," and ARS § 32-1845 (40) "Any conduct or practice that impairs the licensee's ability to safely and skillfully practice medicine or that may reasonably be expected to do so."

After discussion, the Board agreed on the following terms of the probation: 1) that it last one year; 2) that within the first six months Dr. Ginder complete eight hours of Continuing Medical Education on patient histories and physicals in cosmetic surgery, approved by the Board or Executive Director, and that 3) Dr. Ginder's patient charts be reviewed by staff during the year of the probation.

The findings of fact supporting subsection (6) were 1) that there was inadequate documentation of histories and physicals, 2) that inadequate and inappropriate pre-operative laboratory work. The finding supporting subsection (40) is that Dr. Ginder's testimony showed a lack of understanding of histories and physicals.

A roll call vote was taken. Dr. Steinway, Ms. Hendrix, Dr. Brysacz, Dr. Wedel, Dr. Cohen, Mr. Grossman and Dr. Reiss voted in favor of the motion. No one voted against it. The motion passed, 7-0.

The Board recessed at 10:05 a.m. to allow the videographer hired by Dr. Ginder's attorney to remove his equipment from the Board room. The meeting resumed at 10:17 a.m.

B.	Carmen Alfonso, D.O.	Case No. 3136	License No. 3004
C.	Carmen Alfonso, D.O.	Case No. 3139	License No. 3004
D.	Carmen Alfonso, D.O.	Case No. 3152	License No. 3004

Dr. Alfonso was present and represented by an attorney. The Executive Director noted for the record that this was a continuation of a hearing that began on January 24, 2004, and that staff had received a copy of the receipt showing Dr. Alfonso had provided the requested medical records. Dr. Alfonso was sworn in by the court reporter. Her attorney provided the Board additional information about the business relationship between Dr. Alfonso and her prior partner; copies were provided to staff for inclusion in the case file.

Dr. Brysacz moved that the three cases be dismissed. Dr. Steinway seconded. A roll call vote was taken. Dr. Brysacz, Dr. Steinway, Ms. Hendrix, Dr. Wedel, Dr. Cohen, Mr. Grossman and Dr. Reiss voted in favor of the motion. No one voted against it. The motion passed, 7-0.

E.	Budi Bahureksa, D.O.	Case No. 3253	License No. 3901
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Dr. Bahureska was present, and sworn in by the court reporter. The Medical Consultant read the case summary into the record. Dr. Bahureska discussed the case with the Board and responded to their questions. Dr. Brysacz moved that the case be dismissed. Dr. Cohen seconded. The motion passed, 6-1. Mr. Grossman voted against it.

F.	Budi Bahureksa, D.O.	Case No. 3274	License No. 3901
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Dr. Bahureska was present, and sworn in by the court reporter. The Medical Consultant read the case summary into the record. Dr. Bahureksa discussed the case with the Board and responded to their questions. Dr. Steinway moved that the Board issue a Letter of Concern to Dr. Bahureksa; citing the Board's concern that Dr. Bahureksa did not take more active care of the patient and did not document the differential diagnoses. Mr. Grossman seconded. After discussion, Dr. Steinway amended the motion to direct staff to open a new case to investigate the incident involving cut pacemaker leads. A roll call vote was taken. Dr. Steinway, Mr. Grossman, Dr. Wedel, Ms. Hendrix, Dr. Brysacz, and Dr. Cohen voted in favor of the motion. No one voted against. The motion passed, 7-0.

G.	Basem Meri, D.O.	Case No. 3270	License No. 3370
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Dr. Meri was present and represented by an attorney. The Medical Consultant read the case summary into the record. Dr. Meri discussed the case with the Board and responded to their questions. Dr. Brysacz moved for dismissal of the case. Dr. Cohen seconded. A roll call vote was taken. Dr. Brysacz, Dr. Cohen, Dr. Wedel, Dr. Steinway, Ms. Hendrix, Mr. Grossman, and Dr. Reiss voted in favor of the motion. No one voted against. The motion passed, 7-0.

VIII. REVIEW, CONSIDERATION AND ACTION ON COMPLIANCE WITH TERMS OF BOARD ORDERS AND REQUESTS TO MODIFY OR TERMINATE ORDERS, PURSUANT TO A.R.S. 32-1855.

A. Kenneth Levine, D.O. Case No. 2775 License No. 1696

Dr. Levine was present and discussed with the Board his request for early termination of his probation. Ms. Hendrix moved that Dr. Levine's probation be terminated. Dr. Bryscz seconded. The motion passed, 5-2.

The Board recessed for lunch at 12:20 p.m. The meeting resumed at 1:00 p.m.

B. Gary Forsberg, D.O. Case No. 2879 License No. 2791

Based on Dr. Forsberg's request, Dr. Wedel moved that Dr. Forsberg's required self-help meetings be reduced from four per week to three per week. Dr. Steinway seconded. The motion passed, 7-0.

C. Basem Meri, D.O. Case No. 2799 License No. 3370

The Board noted Dr. Meri's continued compliance with the terms of his probation.

D. Philo Rogers, D.O. Cases # 2983, 2496, 2400, & 2349 License No. 2809

The Board tabled this matter.

E. James Miller, D.O. Cases # 2748, 2764, 3023, & 3095M License No. 3063

The Board noted that Dr. Miller is not required to submit case for chart review until he begins to practice cosmetic surgery.

IX. REVIEW, CONSIDERATION, AND ACTION ON APPLICATIONS FOR LICENSURE PURSUANT TO A.R.S. §32-1822 (B); PERMITS PURSUANT TO § A.R.S. 32-1829; AND RENEWALS OF LICENSES PURSUANT TO A.R.S. §32-1825 (C-D) AND A.A.C. R4-22-109.

A Keith Snow, D.O. initial license Applicant No. 0049

The Executive Director informed the Board that Dr. Snow would not be appearing today.

B. Jason Wolff, D.O. initial license Applicant No. 0122

Dr. Wolff was present, as directed. He discussed with the Board his application, and responded to their questions concerning his recovery. Dr. Steinway moved that Dr. Wolff be approved for licensure, on three conditions: 1) that he mark "yes" to the question on the application about participation in a recovery program, and 2) that his license be placed on probation with the same terms in the Pennsylvania agreement. Dr. Wedel seconded. The motion passed, 7-0.

X. REVIEW, DISCUSSION, AND ACTION ON CASE REVIEWS OF ALLEGATIONS OF UNPROFESSIONAL CONDUCT A.R.S. § 32-1855 (C through F).

A. Joseph Janzer, D.O. Case No. 3237 License No. 3702

The Board noted that this case had been voted back to Case Review, since Dr. Janzer notified the Board that he would not be available to attend an Investigative Hearing. Dr. Steinway moved that

the Board issue a Letter of Concern, citing the Board's concern that Dr. Janzer failed to appropriately diagnose and fully treat a finger nodule. Mr. Grossman seconded. The motion passed, 7-0.

B. Douglas Bobb, D.O. Case No. 3224 License No. 1990

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the case be dismissed. Dr. Steinway seconded. The motion passed, 7-0.

C. Phyllis Popp, D.O. Case No. 3239M License No. 2654

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Mr. Grossman seconded. The motion passed, 7-0.

D. Paul Geimer, D.O. Case No. 3246 License No. 1509

The complainant was present and discussed his concerns with the Board. Based on the case materials reviewed and the discussion with the complainant, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Dr. Wedel seconded. The motion passed, 7-0.

E. James Cerneka, D.O. Case No. 3252 License No. 3664

The complainant was present. Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Ms. Hendrix seconded. Dr. Reiss explained to the complainant that since the Board would be holding a hearing on this matter, the Board preferred that the complainant testify then, on the record. The complainant agreed. The motion passed, 7-0.

F. Jeffrey Gitt, D.O. Case No. 3254 License No. 2023

Based on the case materials and the recommendations of the reviewers, Mr. Grossman moved that the case be dismissed. Dr. Steinway seconded. The motion passed, 6-0. Dr. Brysacz was absent from the room at the time this case was considered.

G. Philo Rogers, D.O. Case No. 3257M License No. 2809

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on the case. Ms. Hendrix seconded. The motion passed, 6-0. Dr. Brysacz was absent from the room at the time this case was considered.

H. Neil Goldberg, D.O. Case No. 3262 License No. 3653

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that this case be dismissed. Mr. Grossman seconded. The motion passed, 7-0.

I. Stephen Chakmakian, D.O. Case No. 3184 License No. 3521

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that this case be dismissed. Mr. Grossman seconded. The motion passed, 7-0.

J. Dallas Moeller, D.O. Case No. 3285 License No. 0769

Based on the case materials and the recommendations of the reviewers, Dr. Cohen moved that the case be dismissed. Ms. Hendrix seconded. The motion passed, 6-1.

K. Robert Michaud, D.O. Case No. 3291 License No. 2045

Dr. Michaud was present, and discussed the case with the Board. Based on the case materials, the recommendations of the reviewers and Dr. Michaud's responses, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Mr. Grossman seconded. The motion passed, 7-0. Dr. Reiss directed staff to prepare a chronological list of Dr. Michaud's license history for reference at the hearing.

L. Michael Seip, D.O. Case No. 3308 License No. 2048

Based on the case materials and the recommendations of the reviewers, Ms. Hendrix moved that the case be dismissed. Dr. Wedel seconded. The motion passed, 7-0.

M. Gilbert Toffol, D.O. Case No. 3223 License No. 2365

Based on the case materials and the recommendations of the reviewers, Dr. Cohen moved that the case be dismissed. Dr. Brysacz seconded. The motion passed, 7-0.

N. Allen Corbett Jr., D.O. Case No. 3228 License No. 1372

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the case be dismissed. Dr. Steinway seconded. The motion passed, 7-0.

O. Charles Finch, D.O. Case No. 3236 License No. 3013

Dr. Finch was present. Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the case be dismissed. Dr. Brysacz seconded. The motion passed, 7-0.

P. David Mendelson, D.O. Case No. 3245 License No. 3728

Based on the case materials and the recommendations of the reviewers, Ms. Hendrix moved that the case be dismissed. Dr. Brysacz seconded. The motion passed, 7-0.

Q. David Hatfield, D.O. Case No. 3248 License No. 2913

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Mr. Grossman seconded. The motion passed, 6-1.

R. Bruce Badagliacqua, D.O. Case No. 3255 License No. 2272

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Mr. Grossman seconded. The motion passed, 7-0.

S. Paul Lund Jr, D.O. Case No. 3277 License No. 0648

Based on the case materials and the recommendations of the reviewers, Dr. Cohen moved that the case be dismissed. Dr. Cohen seconded. The motion passed, 7-0.

T. Jeffrey Morgan, D.O. Case No. 3328 License No. 3010

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the case be dismissed. Dr. Cohen seconded. The motion passed, 7-0.

U. Frank Ryan, D.O. Case No. 3294 License No. 3578

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the Board conduct an Investigative Hearing on this case. Ms. Hendrix seconded. The motion passed,

7-0. The Board directed staff to obtain records showing whether Medicare had been billed or paid for these services.

V. Jill Zweig, D.O. Case No. 3306 License No. 2550

Dr. Reiss recused himself from this case. Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the case be dismissed. Ms. Hendrix seconded. The motion passed, 6-0.

W. Gary Forsberg, D.O. Case No. 3319 License No. 2791

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that this case be dismissed. Dr. Steinway seconded. The motion passed, 7-0.

X. Harold Whitney Jr. D.O. Case No. 3225 License No. 1448

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that this case be dismissed. Mr. Grossman seconded. The motion passed, 7-0.

XI. REVIEW, DISCUSSION, AND ACTION ON NOTICES OF MALPRACTICE SETTLEMENTS, JUDGMENTS, AND DECISIONS, PURSUANT TO ARS § 32-1855.02, 32-3203, AND 20-1742; AND NOTICES OF CRIMINAL CHARGES, PURSUANT TO ARS § 32-3208.

None

XII. REVIEW, DISCUSSION, AND ACTION ON PROPOSED LEGISLATION FOR UPCOMING SESSION, PURSUANT TO ARS § 32-1803(B)(13).

A. Consideration legislation for upcoming session (2005)

1. Confidential physicians health program
2. Appropriate supervision of licensed and unlicensed health care professions
3. Updating operational and technical language
4. Delegating to the Executive Director the authority to dismiss certain categories of complaints

The Board asked that the Executive Director prepare draft legislative language for the above.

B. Draft of Budget Request for FY06 & 07

The Board did not comment on this item.

XIII. REVIEW, DISCUSSION, AND ACTION ON RULEMAKING, PURSUANT TO ARS § 32-1803(C)(1) AND (A)(10), AND SUBSTANTIVE POLICY STATEMENTS, PURSUANT TO ARS § 41-1091

AZ Radiation Regulatory proposed rules on laser technicians

Dr. Reiss directed that the Executive Director send a written comment to the AZ Radiation Regulatory Agency, stating that the Board had no opposition to hair removal being done by technicians under indirect supervision, but that all other laser procedures required direct supervision.

XIV. REVIEW, CONSIDERATION, AND ACTION ON EXECUTIVE DIRECTOR'S REPORT.

- A. Performance Measures Report
- B. Financial Report
- C. List of Meetings, Presentations, and Articles

Mr. Grossman commented on the favorable amount of revenue collected during the past fiscal year.

XV. REVIEW, CONSIDERATION, AND ACTION ON LITIGATION AGAINST THE BOARD.

- A. Kalmonsohn v. Finkel, State of AZ, et al / CV2002-002556

The Executive Director informed the Board that the State of AZ (that is, the Board) had been dismissed from the suit, but the appeal period had not yet lapsed.

- B. Taylor v. AZ Board of Osteopathic Examiners / CV2003-23130

Dr. Steinway moved that the Board go into Executive Session to receive legal advice on pending litigation. Mr. Grossman seconded. The motion passed, 7-0. The Board went into Executive Session at 3:00 p.m., and returned to Open Session at 3:20 p.m.

XVI. ADJOURNMENT

The meeting was adjourned at 3:35 p.m.

Draft date: August 2, 2004
Approved: September 11, 2004